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## THE CONNECTION BETWEEN INSANITY AND CRIME.\*

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Early in the year I wrote to my co-members on this committee, Dr. H. P. Stearns, of Hartford, Connecticut, and Dr. P. L. Murphy, of North Carolina, asking them if they would not aid me in preparing the report. To my request they made a negative reply, and I have been left therefore to prepare it alone.

Several valuable works have appeared during the year in English, German and French, and a mass of valuable papers have appeared in journals devoted to mental and nervous diseases, especially might I mention some in the Italian journals, were it not invidious to do so. Instead, however, of passing these various publications in review, I have taken up one particular branch of our specialty, the medico-legal branch, and this paper will be limited to the consideration of the Connection between Crime and Insanity.

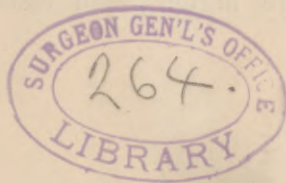
This I have felt it a duty to do partly because of its importance in this country at the present time, and partly because of the appearance of the recent valuable contribution of Mr. Justice Stephen, of the Queen's Bench, on the subject.†

Chapter XIX of the second volume of his work, entitled the "History of the Criminal Law of

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\* Report of the Committee on the Bibliography of Insanity, read at the meeting of the Association of Medical Superintendents of American Institutions for the Insane, at Saratoga, N. Y., June 17, 1885.

† History of the Criminal Law of England. By Sir James Fitz James Stephen. 3 vols. Vol. II, p. 124.



England," is given up to the consideration of the "Relation of Madness to Crime."

In a little more than eighty pages he most thoroughly and lucidly enunciates his views of the connection between these two conditions, and it is perhaps not too much to say that he is able to make clear some of the legal ideas of insanity more satisfactorily, than any writer that I can now think of.

He leaves some things unsaid, perhaps, and occasionally arrives at conclusions, which hardly seem warranted, but it can not be denied, that in most instances his positions are well taken and skilfully maintained.

I shall give some extracts from his chapter, and endeavor to discover in what particulars a medical man might justifiably differ from him.

In the beginning, Sir James very modestly says that he approaches the discussion of the subject with considerable distrust of his own power of dealing with it satisfactorily, "as it can not be treated fully without a degree of medical knowledge, to which I have no pretensions."

In a foot-note he says he has most frequently referred to the works of Griesinger, (edition of 1867); Bucknill and Tuke, (edition of 1874); and Maudsley, (Pathology of Mind, 1879; Physiology of Mind, 1876; Responsibility in Mental Disease, 1881.) He has read and considered many other works on the subject, but does not consider it necessary to mention them, as they say much the same things in different ways.

A medical man on reading this list of writers that the learned justice refers to will perhaps regret that he does not give a somewhat more extended reference to the writers he has consulted, for while no authorities are higher than those he gives, other writers have

added and filled out the views expressed by them, and some of the wants he has found in the works read by him might be found supplied elsewhere.

Psychological medicine has made very considerable strides within even a period of ten years, and the German school, represented by Krafft-Ebing, Schüle and others, has done a good deal toward systematizing the study of insanity.

Sir James truly says that there has been much excited controversy between the medical and legal professions in which many things have been said which would have been better unsaid.

Cruelty, ignorance, prejudice, and the like, are freely ascribed to the law and to those who administer it, on the grounds that it is said not to keep pace with the discoveries of science, and to deny facts medically ascertained. The heat and vehemence with which such charges are made, makes a perfectly impartial discussion of the whole matter difficult. It is hard for any one not to resent attacks upon a small body, of which he is himself a member; such attacks often being harsh and rude and almost always connected with, if not founded, upon misconceptions. The interest, and possibly the importance of the task is, however, upon a par with its difficulty and it certainly should be said, in extenuation of the violent language, which medical writers frequently use upon this matter, that they are sometimes treated in a court of justice, even by judges, in a manner, which I think they are entitled to resent. Sarcasm and ridicule, are out of place on the bench in almost all conceivable cases, but particularly when they are directed against a gentleman, and a man of science who, under circumstances, which in themselves are often found trying to the coolest nerves, is attempting to state unfamiliar, and in many cases unwelcome doctrines, to which he attaches high importance.

Medical men should thank Sir James for the spirit of fairness he here shows, a spirit often lacking in our own courts. Often the mere manner and plausibility with which an expert opinion is presented are the criterion by which he is judged—a cool, unpretentious



enunciation of medical truths, is often belittled and argued out of sight by an unscrupulous counsel, or carelessly listened to by the court.

Juries are frequently incapable, without any reflection on their education, of appreciating medical expert testimony. They easily catch the prevailing spirit of judicial indifference and listen with a dull ear, and little interest, to perhaps the most important evidence of all.

Sir James proceeds to say:

The different legal authorities upon the subject have been right in holding that the mere existence of madness ought not to be an excuse for crime, unless it produces in fact, one or the other of certain consequences . . . . Medical men . . . . have contended in substance that every person who suffered in any degree under a disease of which the nature is most obscure, while the symptoms vary infinitely, should be free in all cases from legal punishment.

This statement of the position of medical men sounds almost like an exaggeration, yet undoubtedly is true. It has however an explanation, which is somewhat as follows:

Mental diseases are obscure and at any given moment rarely present all the symptoms which render their diagnosis easily self-evident. If there are one or several indications that insanity exists we are right in assuming that on a sufficient investigation, we shall be able to make the existence of disease certain. Therefore what may seem to a lawyer the slightest degree of mental disease may be to the expert only one indication of deeper trouble, not superficially apparent, but none the less, in existence.

It is a knowledge of this gravity of the disease, which is often externally masked, that leads medical men to think that all insane men should be free from legal punishment.

To read judicial opinions correctly is an art in itself, (Sir James says), to be acquired only by long professional practice, nor can any one begin to do so before he has familiarized himself with several rules well-known to lawyers, but in my experience, altogether unknown to medical men.

If controversy were my object it would be easy to show that hardly any one of the medical critics of the law understands what he criticises, so far even as to be able to quote correctly the authorities on which he relies.

I have no doubt, from a lawyer's point of view, that this is an entirely correct statement.

It is quite what we should expect one profession to say of another, and is equally in accordance with our experience that a legal gentleman rarely interprets medical dogmas, precisely as would a medical man. To the latter, statements and facts laid down in his text-books, have a significance understandable only after years of medical training both elementary and practical.

A technical training may be more necessary to rightly convey the meaning of legal dicta, as many legal phrases and words have peculiar renderings and associations, known only to a legally educated man.

The moral for the medical man to draw is to more carefully revise his acquaintance of matters of law, and still further to keep his own opinions within strictly medical limits. He is only entirely safe when he holds himself to his own province.

Sir James next takes up a very important question, in the present mixed state of medico-legal knowledge, namely, the legal meaning of responsibility. We all of us have an idea of responsibility, but hardly the legal idea.

He quotes a passage from Dr. Maudsley,\* the sense of which is that,

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\* Responsibility in Mental Disease p. 102.

Independently of all law there are conditions of mind called responsibility and irresponsibility; that from insufficient observation the judges have falsely inferred that irresponsibility is a fact, inconsistent with knowledge that a given act is wrong; and that judges habitually trespass on the province of the jury by withdrawing from their consideration the fact, that physicians assert that knowledge that an act is wrong is consistent with irresponsibility.

Apart from the question whether the law is as Dr. Maudsley supposes it to be, all that a judge directing a jury ever does or can understand by responsibility, or irresponsibility is, that the person referred to is or is not *liable*\* according to the existing law of England to be punished. . . . To allow a physician to give evidence, to show that a man who is legally responsible, is not morally responsible, is admitting evidence, which can have no other effect than to persuade juries to break the law.

Such is the opinion of Mr. Justice Stephen, and it demands our serious attention proceeding as it does from so learned a judge. That he does to a certain degree modify this opinion will be apparent I think further on. He says:

If it is true, as I think it is, that the law of England on this subject is insufficiently expressed, it is no less true that medical knowledge relating to insanity is fragmentary, not well arranged and to say the least, quite as incomplete as the law. . . . If then due importance is not attached by lawyers to the more delicate and obscure forms of disease of the brain, it must be observed that medical men have but recently brought them to light, and are by no means unanimous as to their nature and effect.

Sir James then proceeds to discuss the meaning of the word mind; a sane and insane mind, and in how far, and in what case the fact that a person is insane, relieves him, by the law of England, from responsibility for what would otherwise be a crime, and further how far that law is reasonable.

He would say that the word mind, may be—

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\* Italics mine.



Used as a general name for all the operations commonly called mental, namely: sensation or feeling, intellect, emotion volition.

Sanity exists when the brain and the nervous system are in such a condition that the mental functions of feeling and knowing, emotion and willing, can be performed in their regular and usual manner. Insanity means a state in which one or more of the above named mental functions is performed in an abnormal manner, or not performed at all by reason of some disease of the brain, or nervous system.

Dr. Bucknill\* criticises the above definition of insanity, saying:

It is a medical definition covering the slightest deviation from mental health arising from hysteria or alcohol, from bile or gout. It includes a state of feeling as sensation, which may not affect the mind. It includes abeyance of mental functions which is not insanity; for when the mental functions are not performed at all, there is no insanity.

No good, he thinks, is gained by thus analyzing the mind. He gives a medico-legal definition of insanity, which is an improvement over most of those given elsewhere. "Insanity," he says, "is incapacitating weakness, or derangement of mind, caused by disease."

It will be observed that he leaves out the usual addition of the seat of the disease, namely, the brain. Why he does so, is not clear to my mind. It may be that he thinks insanity may be caused by disease of the nervous system elsewhere than the brain, an idea recently revived. He says the all important term in the definition is the attribute which points to the want of power to do something, and that being the case he may not regard it as necessary to give a more exact medical significance to his definition.

He thinks it useful and scientifically accurate to make a distinction between derangement and weakness. It is

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\*A Lecture on the Relation of Madness to Crime. By J. C. Bucknill, M. D., F. R. S. Reprinted in the AMERICAN JOURNAL OF INSANITY.

hard for me to follow him here, as strictly speaking, I do not see how any kind of insanity can exist without weakening, impairment, or loss of mental power. Derangement is an old-fashioned word in this country, usually used as a synonym for insanity. If we say a man is deranged, we mean that he is insane. The English use of the word is undoubtedly somewhat different. Thus Worcester says: "*Derangement, alienation and delirium* are all used to denote a less confirmed, or a less violent mental disease than *madness* and *mania*."

If Dr. Bucknill's definition were changed to "incapacitating weakness of mind caused by disease of the brain," it would seem to gain in accuracy rather than to lose. If we use the word disease, it is well to further modify it.

Mr. Justice Stephen, after explaining that the brain and nervous system are the organs by which all mental operations are conducted, goes on to say that he finds great difficulty in discovering in any medical work a definite account of the course of symptoms collectively exhibiting the disease.

Many forms of insanity are referred to, such as total insanity, partial insanity, impulsive insanity, moral insanity, pyromania, kleptomania, "but in the absence of any general account of the whole subject, showing what is the common cause, of which all these symptoms are effects, and how they respectively proceed from it, these expressions are like adjectives connected with an unintelligible substantive."

Again he says he has sought in vain for what appeared on the face of it an accurate picture of insanity, as a real disease. In Griesinger's work on "Mental Pathology and Therapeutics" only did he find the sketch he sought. Griesinger published his second



edition in 1861, it will be remembered, the English translation being issued in 1867.

Since 1861, as I have already intimated, the medical literature of insanity has grown immensely, and many new facts bearing on insanity have been brought to light. Many excellent, systematic treatises have been written; new classifications adopted, and very carefully prepared observations on the pathology, etiology and morbid anatomy of insanity have been published from time to time. Notwithstanding these facts, however, Griesinger is perhaps as good an authority as Sir James could have selected for his purpose.

He sums up what he learns from Griesinger somewhat as follows: Any one or more of numerous causes may produce disease of the brain or nervous system, which interfere more or less with the feelings, the will and the intellect of the persons affected. Commonly the disease if it runs its full course, effects the emotions first, and afterwards the intellect and the will. It may produce either melancholia or mania, the first being much the most common. Both of these forms of insanity "commonly cause delusion, or false opinions, as to existing facts, which suggest themselves to the mind of the sufferer as explanations of his morbid feelings." The delusions are often accompanied by hallucinations.

Melancholia, mania, and the delusions arising from them, often supply powerful motives to do destructive and mischievous acts; and cases occur in which the earnest and passionate desire to do such acts is the first and perhaps the only marked symptom of mental disease. It is probable that in such cases some morbid state of the brain produces a vague craving for relief by some sort of passionate action, the special form of which is determined by accidental circumstances; so that such impulses may differ in their nature and mode of operation from the motive which operate on sane and insane alike.

Insanity affecting the emotions in the form of melancholia and mania is often succeeded by insanity affecting the intellect and will. In this stage of the disease, the characteristic symptom is the existence of permanent incurable delusions commonly called monomania. The existence of any such delusion, indicates disorganization of all the mental power, including not only the power of thinking correctly, but the power of keeping before the mind and applying to particular cases general principles of conduct.

The last stage of insanity is one of utter feebleness. Paralysis and epilepsy are also closely allied to insanity.

Moral insanity is next spoken of, and Dr. Maudsley's account given of it.

The above account may stand for a fair description of insanity from a legal stand-point. The only objection to it seems to be that it sometimes conveys an imperfect idea of the conditions it describes.

We should hardly say that melancholia and mania are emotional states alone, for accompanying them there is intellectual change or impairment as well. Morbid thoughts and ideas are evolved in the earliest stages of melancholia and mania. Delusions, or delusive ideas, are in fact often the earliest indications of mental trouble; the first visible outward manifestations we might say. The intellectual and emotional changes are inter-dependent, developed together. There is no arbitrary line between them, and it is hardly safe to endeavor to separate them for the sake of greater clearness of description, or expression, desirable as it is on legal grounds.

A medical man would hardly say, if he desired to be very accurate, "*melancholia, mania, and the delusions arising from them,*" but rather, *melancholia and mania with their accompanying delusions.* Delusions are characteristic of these forms of insanity. In some cases they are unusually prominent and easily recog-

nized, to be sure, but they may be assumed to exist when not easily recognized.

The mistake made by lawyers seems to be that they regard delusions rather as entities than an integral part of the disease. They do not appreciate the fact that the insane condition is a delusive or false one, the power of perception being disturbed and weakened.

Monomania, from one point of view, though a useful word to us, is misleading to lawyers, for it conveys this same idea, of a single, mistaken idea in one direction, whereas it is much more. It is merely the outward expression of a general functional, or organic disturbance. The feelings, intellect and will are all affected, as in melancholia and mania.

Clouston\* has very truly said that "there are very few, if any, examples of a pure monomania—that is of a person who has one single delusion, and that alone. The ordinary form of this type of mental disturbance is for the delusions of the patient to refer to one particular subject, or set of subjects."

Blandford† in his last edition, deprecates the use of the word monomania, and says nothing is gained by employing it, as no two persons attach the same meaning to it.

Sankey‡ (last edition) particularly dislikes the word and says as such a condition does not exist, most writers have agreed to abandon the word.

Krafft-Ebing§ refers to the views of the old German writers that monomania arose primarily from melancholia, or mania, and said that in those cases where such an origin was not found, the history they thought,

\* Lectures on Mental Disease, p. 189.

† Insanity and its Treatment, p. 271.

‡ Lectures on Mental Disease.

§ Lehrbuch der Psychiatrie, p. 70 et seq.



was imperfect, as an initial melancholia or mania must have existed.

Snell,\* in 1865, described a form of insanity characterized by delusions with hallucinations, but without the self-absorption of melancholia, or the confused idea and severity of mania, and which generally affected the intellect less than the other forms of insanity. He thought monomania a name not ill-adapted for this disease.

Griesinger at a later period, recognized a form of insanity of primary origin. Sander, Schüle, Hertz, Westphal and others have also adopted the same idea. *Primäre Verrücktheit*, is certainly now a well described and clearly recognized form of disease with the Germans.

Spitzka† states that Griesinger formally accepted the doctrines of Snell before his death. He also says that, "To-day the German alienists, by a resolution of their association, stand unanimously committed to the recognition of a primary form of chronic insanity known by them as *Primäre Verrücktheit*, and equivalent to the *monomanie* of the French."

The word *monomania* appears an unfortunate one, possessing as it does, so many different meanings, and if used at all must be used with the greatest caution. I endeavor myself to avoid it; preferring rather to say mania with delusions of a certain nature.

*Primäre Verrücktheit* is an excellent term in German, but an equivalent should be found for it in our own language. Monomania will hardly be sufficient, unless by common consent we modify, or rearrange our nomenclature.

The time must sometime come when we shall have a

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\* Insanity, Spitzka, p. 289.

† Insanity, p. 289.

clear, precise and scientific system of classifications of the different forms of insanity. Until such a time, at least in courts of law, it is best to use simple and well recognized names in describing the various kinds of mental disease. Outside of court rooms, the discussion of a classification is to be desired in order that by continual striving we may eventually evolve a uniform system.

Sir James next refers to moral insanity, which he relies on Maudsley to describe, and then says as a summary of what has gone before:

Insanity powerfully affects, or may affect the knowledge by which our actions are guided; the feelings by which our actions are prompted; the will by which our actions are performed, whether the word will is taken to mean volition, or a settled judgment of the reason, acting as a standing control on such actions as relate to it.

The means by which these effects are produced are unnatural feelings; delusions or false opinions as to facts; hallucinations or deceptions of the senses; impulses to particular acts, or classes of acts: and in some cases (it is said) a specific physical inability to recognize the difference between moral good and evil as a motive for doing good and avoiding evil.

Sir James then proceeds to consider how far these conditions may serve as an excuse for crime, and how far the state of law on the subject is reasonable.

In his *Digest* he has stated the law of England as follows:

No act is a crime if the person who does it is at the time when it is done prevented [either by defective mental power or]\* by any disease affecting his mind.

(a.) From knowing the nature and quality of his act, or

(b.) From knowing that the act is wrong† [or

(c.) From controlling his own conduct, unless the absence of the power of control has been produced by his own default.]

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\* The parts enclosed in brackets [ ] are doubtful.

† Variouslly interpreted as meaning morally wrong and illegal.

But an act may be a crime, although the mind of the person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.

Sir James speaks of some of the meanings to these terms being clear, but not under certain combinations of facts. The authorities have not satisfactorily settled the matter. Coke mentions the subject of madness only casually. Hale has a chapter on it, which omits the difficulties, and is generally marked by the ignorance of the age in which it was written.

"From the time of Hale to our own no legal writer of authority has discussed this matter on its merits. . . . the circumstances have never been such as to afford an opportunity for a solemn argument and judgment, laying down the principles of law by which the relation of insanity to crime may be determined."

Apart from some slight exceptions, Sir James says that "every judgment delivered since 1843 has been founded upon an authority which deserves to be described as in many ways doubtful."

The authority to which he refers is that of the answers of the judges to the questions on insane delusions put to them in consequence of the acquittal of McNaghten.

It has been the custom ever since these answers were given for judges to make use of them in charging juries, and Sir James himself has done so on several occasions. He himself, however, in common with some of the most distinguished judges feels that the authority of the answers is questionable, and it appears to him they leave untouched the most difficult questions connected with the subject.

In the first place they do not form a judgment upon definite facts proved by evidence.



In the second place "they leave untouched every state of facts which, though included under the general words of the questions, can nevertheless be distinguished from them by circumstances which the House of Lords did not take into account in framing the questions."

The points on which the law appears to be left in doubt may be reduced to one question: "Is madness to be regarded solely as a case of innocent ignorance or mistake, or is it to be regarded as a disease which may affect the emotions and the will in such a manner that the sufferer ought not to be punished for the acts which it causes him to do?"

After carefully analyzing the answers somewhat in detail, Sir James gives it as his opinion, "that even if the answers given by the judges in *McNaghten's* case are regarded as a binding declaration of the law of England, that law as it stands is, that a man who by reason of mental disease is prevented from controlling his own conduct is not responsible for what he does." He also thinks that the existence of any insane delusion, impulse, or other state which is commonly produced by madness is a fact relevant to the question, whether or not he can control his conduct, and as such may be proved and ought to be left to the jury.

The influence of madness over the will seems to him to admit of classification under two heads. If madness furnishes a strong, yet a controllable temptation to crime it should not be an excuse. A man whose temper was intensely exasperated by suppressed gout would not be excused for any act of violence which he might commit in consequence, and why should he be excused if his general power of self-control remained, if the act of violence was caused by insanity?

There are cases, however, in which self-control is

interfered with, and if this can be proved, the sufferer should be excused.

The man who controls himself refers to distant motives and general principles of conduct, and directs his conduct accordingly. The man who does not control himself is guided by the motives which immediately press upon his attention. If this is so, the power of self-control must mean a power to attend to distant motives and general principles of conduct, and to connect them rationally with the particular act under consideration, and a disease of the brain, which so weakens the sufferer's power as to prevent him from attending or referring to such consideration, or from connecting the general theory with the particular act, deprives him of the power of self-control.

Can it be said that a person so situated knows that his act is wrong? I think not; for how does any one know that any act is wrong except by comparing it with general rules of conduct which forbid it, and if he is unable to appreciate such rules or to apply them to the particular case, how is he to know that what he proposes to do is wrong?

Where madness is proved juries should return one of these verdicts: "Guilty; Guilty, but his power of self-control was diminished by insanity; Not guilty on the ground of insanity."

Sir James justifies the first verdict somewhat as follows: Insanity is a disease, but in many cases it is the sufferer's own fault. Medical works make the connection between insanity and every sort of repulsive vice so clear, that it seems more natural to ask in many cases, if it is not rather a crime in itself than an excuse for the crime it causes. We do not recognize the grossest ignorance, the most wretched education or involuntary association with criminals as an excuse for crime. This should lead to strictness in allowing insanity as any excuse at all in doubtful cases.

It is upon this ground "that the general rule that a person should not be liable to be punished for any act done when he is deprived by disease of the power of

controlling his conduct should be qualified by the words *unless the absence of the power of control has been caused by his own default.*"\*

Here Sir James takes the strictly abstract legal view, and I for one can not follow him to the extreme which he reaches. If medical works make the connection between vice and insanity clear in many cases, in a very much larger number of cases they make the absence of this connection equally clear. They show that heredity, want, domestic anxiety or affliction, business cares, over education, unavoidable physical disease, all of these of a perfectly innocent nature, very frequently lead to insanity.

An exactly opposite inference to the one drawn by Sir James would be the more justifiable, and we might say the fact that insanity exists should be presumptive evidence of the alleged criminal's innocence.

Neither have we adequate grounds for reasoning by analogy and saying that insanity which very rarely leads to crime, as a matter of fact, is similar in nature to gross ignorance, wretched education, or involuntary association with criminals. The existence of these conditions *implies* favoring circumstances for the development of crime. Insanity implies nothing of the kind.

Sir James says as to the second verdict:

Reluctance to punish when punishment is needed seems to be to me not benevolence but cowardice, and I think that the proper attitude of mind toward criminals is not long suffering charity, but often enmity; for the object of the criminal law is to overcome evil with evil. But, however this may be, it is impossible to state it more clearly than these passages state it, the position for which lawyers have contended as to insanity. That position is, that parts of the conduct of mad people are not affected by their madness, and that if such parts of their conduct are criminal, they ought to be punished for it.

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\* *Italics mine.*



Again Sir James is legal in his view of the subject, as indeed he should be. To me it sounds harsh to say unqualifiedly the only way to overcome evil is with evil.

We get on dangerous grounds as experts when we speak of parts of the conduct of mad people. It seems to me both undesirable and unscientific to separate conduct into parts. A given case should be considered in its entirety and a complete description of all the attributes of conduct be given and passed on.

In relation to the form of *punishment* to be made use of in cases covered by the second verdict, Sir James has some very original ideas, the latter part of which must meet with our approval, however unwilling we may be to agree to the expression of *punishing* of insane persons. He says:

Ought they (the second class) to be punished in all respects like sane people? To this I should certainly answer: Yes, as far as severity goes; no, as far as the manner of punishment goes. The man who, though mad, was found guilty without any qualification of murder, I would hang; but if the jury qualified their verdict in the manner suggested in respect of any offender, I think he should be sentenced if the case were murder, to penal servitude for life, or not less than fourteen years, and in cases not capital to any punishment which might be inflicted on a sane man. As to the manner of executing the sentence, I think there ought to be special asylums, or special wards in the existing asylums, reserved for criminal lunatics, in which they should be treated, not as innocent lunatics are treated, but as criminals, though the discipline might be so arranged as to meet the circumstances of their disorder. . . . The man who is acquitted on the ground of insanity and the man who is convicted, but found to have been under the influence of insanity to some extent, ought, I think, to be separated and submitted to different kinds of discipline.

"In connection with this subject," Sir James says, "I may observe that the principle that madmen ought in

some cases to be punished is proved by the practice of lunatic asylums." \*

In a foot-note he says that Dr. Maudsley admits this (Responsibility, p. 129). He (Maudsley) goes so far as to say "abolish capital punishment, and the dispute between lawyers and doctors ceases to be of practical importance." Maudsley says that the punishment of death should never be inflicted on an insane person, but Sir James thinks cases, though rare, might occur as he has above intimated.

As to the verdict of not guilty on the ground of insanity, Sir James says:

It ought to be returned in those cases, in which it is proved that the power of self-control in respect of the particular act is so much weakened that it may be regarded as practically destroyed, either by general weakening of the mental powers, or by morbid excitement, or by delusions which throw the whole mind into disorder, or which are evidence that it has been thrown into disorder by diseases of which they are symptoms, or by impulses which really are irresistible, and not merely unresisted.

To conclude, it appears to Sir James that the line between the departments of law and medicine in this matter is, *theoretically*, and ought to be, *practically* clear.

What the mental elements of responsibility are, is and must be a legal question. It can not be anything else, "for the meaning of responsibility is liability to punishment; and if criminal law does not determine

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\* Why should this be an argument in favor of punishing lunatics? Punishment is to protect society, and to deter its members from crime, to its own injury. Is there anything in the conduct of insane asylum inmates who obey rules like a higher order of animals, which would lead us to believe that these ends would be better accomplished, if lunatics as a class were made to undergo penal servitude? Perhaps it did not occur to Sir James that lunatic asylums have to be built and managed in a manner *adapted* to lunatics, otherwise the lunatics could not adapt themselves to these institutions.

who are to be punished under given circumstances, it determines nothing."

These elements, so far as madness is concerned, are knowledge that an act is wrong and power to abstain from doing it, and it is the province of judges to declare and explain this to the jury.

I think it the province of medical men to state for the information of the court such facts as experience has taught them bearing upon the question whether any given form of madness affects, and in what manner and to what extent it affects, either of these elements of responsibility, and I see no reason why, under the law as it stands, this division of labour should not be fully carried out.

If I am wrong in thinking that the power to abstain from a given act is an element of responsibility for it, the duty of the judge is to tell the jury that such is the law and to exclude from the consideration of the jury as being irrelevant, all evidence tending to show that the accused person was deprived by disease of control over his actions.

Sir James next briefly considers moral insanity. Maudsley, Pritchard and Ray describe this form of insanity, which seem to diminish, or destroy those habitual feelings unfortunately called the "moral sense." He would shrink from saying that this form of disease should never excuse crime. It would depend on whether the jury could or could not be convinced that the sufferer in a given case was deprived of the knowledge, or of the power which he regards as the two elements of responsibility by law.

If the morally insane man is as able to abstain from crime as a sane bad man and has the same reason—namely, fear of punishment for abstaining from crime, why should not he be punished if he gives way to crime?

To this question we must answer that we do not believe in the morally insane man. That is we believe that while cases may exist without delusion, strictly



speaking, we feel sure that in any case of apparent moral insanity sufficient intellectual impairment will be found to constitute a true instance of complete insanity. There may be cases of insanity with the immoral elements most prominent, and these to us always correspond to the so-called cases of "moral insanity." Unless something besides depravity exist, we can not call a man insane.

Sir James says finally that:

The impression made on my mind by hearing many, some most distinguished judges sum up to juries in cases of insanity, and by watching juries to whom I have myself summed up on such occasions, is that they care very little for generalities. In my experience they are usually reluctant to convict if they look upon the act itself as upon the whole a mad one, and to acquit if they think it was an ordinary crime. But their decision between madness and crime turn much more upon the particular circumstances of the case, and the common meaning of words, than upon the theories, legal or medical, which are put before them. It is questionable to me whether a more elaborate enquiry would produce more substantial justice.

In what I have written above I have quoted very extensively and said but little myself, which the more commends my report to your consideration. It is my earnest hope that it will lead to a thorough discussion of the difficult and important subject of which it treats.

